United States Supreme Court,

OCTOBER TERM, 1909.

No. 39.

BYRON F. BABBITT, Trustee in Bankruptcy of the Estate of the Randolph-Macon Coal Company,
Appellant,

against

HOWARD DUTCHER, Secretary of Randolph-Macon Coal Company, and JAMES T. GARDINER, President of Randolph-Macon Coal Company,
Appellees.

BRIEF FOR APPELLEES.

HENRY W. TAFT,
Of Counsel for Appellees.

C. G. BURGOYNE, 72 to 76 Spring Street, New York.

Supreme Court of the United States,

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Appellant,

AGAINST

HOWARD DUTCHER, Secretary of RANDOLPH-MACON COAL COMPANY, and JAMES T. GARDINER, President of RANDOLPH-MACON COAL COMPANY,
Appellees.

BRIEF FOR APPELLEES.

The question arises in this case whether a District Court can at the instance of a trustee in bankruptcy appointed by a District Court for another district compel by summary process the delivery of books claimed to be, and to relate to, the property of the bankrupt. Two questions are presented, viz: *first*, whether a District Court, as a Court of Bankruptcy, has ancillary jurisdiction to entertain a summary proceeding in aid of bankruptcy proceedings instituted in a district other than its own, and *second*, whether there is any real dispute as to title to the books which the trustee seeks to recover which cannot be adjudicated except in a plenary action brought for the purpose.

The contention of the appellee in the District Court was that stock certificate books and stock ledgers did not relate to the *property* of the *corporation* but to the proportionate shares or interests therein of the *stockholders*. In respect to the minutes, it was contended that they were kept solely for the convenience of the directors and stockholders and were not "documents relating to" the property of the corporation. Appellees also denied the appellant's title to the books in question (Record, fol. 13). These were the grounds of the refusal of the appellees to deliver the books in question to the appellant.

With these modifications we are satisfied with our opponent's statement of facts.

POINT I.

A District Court has no ancillary jurisdiction on the application of a trustee in bankruptcy appointed by another District Court to compel by summary order the delivery to him of property of the bankrupt.

There has been some conflict in the decisions under the Act of 1898 as to the ancillary jurisdiction as a court of bankruptcy of a District Court in a district other than that where a bankruptcy proceeding is pending, but the decided weight of authority does not sustain such jurisdiction. Under the Acts of 1841 and 1867, however, it was generally held that such jurisdiction did exist. There are only four decisions under the Act of 1898 which upholds such jurisdiction. One is the decision of District Judge HOLT in the Southern District of New York (*In re Sutter Brothers*, 131 Fed. Rep., 654)

holding that ancillary jurisdiction existed to grant a creditor's application for the examination of witnesses in a district other than that where the adjudication in bankruptcy was rendered. But the same Judge was obliged in the case at bar, upon the authority of the decision of the Circuit Court of Appeals for the Second Circuit, in *In re Von Hartz* (142 Fed. Rep., 726), to abandon the position he took in the *Sutter* case and hold that such ancillary jurisdiction did not exist. Another decision is that of District Judge YOUNG, of the Western District of Pennsylvania, in *In re Dunseath & Son Co.* (168 Fed. Rep., 973), which is deprived of weight as an authority by the fact that, although it is the latest decision upon the question, the Court either overlooked or ignored two previous decisions of the Circuit Court of Appeals (*In re Von Hartz*, 142 Fed. Rep., 726, in the Second Circuit, and *Hull vs. Burr*, 153 Fed. Rep., 945, in the Fifth Circuit) in both of which a different conclusion was reached.

In re Peiser, 115 Fed. Rep., 199, should also be noted. A receiver appointed by the District Court for the Southern District of New York had obtained an order adjudging a Trust Company in Philadelphia in contempt for refusing to pay to the receiver funds belonging to the bankrupt as directed by order of Court. The District Court for the Southern District of New York directed its receiver to apply to the District Court for the Eastern District of Pennsylvania for assistance in enforcing the orders of District Court for the Southern District of New York. On the application of the receiver pursuant to this direction to the District Court for the Eastern District of Pennsylvania an order to pay over the money or to show cause was granted by District Judge MCPHERSON. He, however, wrote no opinion and the decision was no doubt based largely upon the fact that the application was made pursuant to the direction of the District Court for the Southern District of New York.

The only other decision which sustains the ancillary jurisdiction in bankruptcy of District Courts is *In re*

Benedict, 140 Fed. Rep., 55, and this will be referred to more fully below.

In *re Von Hartz, supra*, the Circuit Court of Appeals for the Second Circuit (the Court consisting of LACOMBE, TOWNSEND and COX, Circuit Judges), held that in an involuntary bankruptcy proceeding instituted in the District of New Jersey, the District Court for the Southern District of New York had no jurisdiction to make an order summarily directing a person to turn over to a trustee in bankruptcy a policy of life insurance upon the life of the bankrupt, which had been assigned to the person against whom the proceeding was directed. The decision of the Court was based upon the decisions *In re Williams*, 120 Fed. Rep., 38, and *In re Williams*, 123 Fed. Rep., 321, both referred to below, the Court stating that it concurred with the reasoning of the Court in those two cases.

In *Hull vs. Burr, supra*, it was held by the Circuit Court of Appeals for the Fifth Circuit that a District Court was without jurisdiction in a suit by a trustee in bankruptcy appointed in another district to recover property from one to whom it was conveyed by the bankrupt more than four months prior to the bankruptcy and who took possession of it after the bankruptcy. The Court considered the petition in several aspects and, among others, as a *summary proceeding* in bankruptcy to obtain possession of property withheld. The application was made in the Northern District of Florida, the bankrupt having been a corporation whose bankruptcy had been adjudicated in the United States District Court for the State of Massachusetts. Counsel cited cases construing the Bankruptcy Acts of 1841 and 1867, but the Court held that these were inapplicable "because each of those acts contained a provision conferring on the Circuit and District Courts of the United States concurrent jurisdiction of suits at law and in equity between the assignee in bankruptcy and an adverse claimant of the property of the bankrupt. The Act of 1898 contains no such provision."

The Court then proceeds :

> " We find no provision of the act which ex-
> " pressly or impliedly makes provision for sum-
> " mary proceedings or for auxiliary or ancillary
> " proceedings in another court of bankruptcy in
> " aid of the bankruptcy court that made the adju-
> " dication and has charge of the bankrupt's estate.
> " Congress, of course, could have adopted a
> " scheme by which every District Court would be
> " charged with the collection or administration of
> " the bankrupt's property in aid of or ancilliary to
> " the jurisdiction of the court of adjudication,
> " but we find in the act no hint of such intention.
> " On the contrary, the act limits the jurisdiction
> " of the bankruptcy courts, including even the one
> " of adjudication, by providing that suits by the
> " trustee—with the exceptions we have noted—
> " shall only be brought or prosecuted in the courts
> " where the bankrupt whose estate is being ad-
> " ministered by such trustee might have brought
> " or prosecuted them if proceedings in bankruptcy
> " had not been instituted.
>
> " We are of opinion that the District Court
> " erred in overruling the plea to the jurisdiction."

In re Williams, 120 Fed. Rep., 38, was the first decision under the act of 1898 on the subject of ancillary jurisdiction. This case was decided in the Eastern District of Arkansas in 1903, by District Judge TRIEBER. He said :

> " Bankruptcy courts, like all other national
> " courts, although not courts of inferior jurisdic-
> " tion, are courts of limited jurisdiction. They
> " are creatures of the statute, and possess no pow-
> " ers except those conferred upon them either ex-
> " pressly or by necessary implication. The juris-
> " diction of the district courts as courts of bank-
> " ruptcy is to be found in section 2 of the bank-

" ruptcy act (U. S. Comp. St. 1901, p. 3420). The " provisions applicable to this case, and which are " invoked by learned counsel, are as follows:

" 'That the courts of bankruptcy * * * " 'are hereby invested within their respective " 'territorial limits * * * with such juris- " 'diction at law and in equity as will enable " 'them to exercise original jurisdiction in bank- " 'ruptcy proceedings, in vacation in chambers " 'and during their respective terms, as they are " 'now or may be hereafter held, to—'

" And then enumerates 19 subjects, among " them subdivision 7 (U. S. Comp. St. 1901, p. " 3421), which is as follows:

" 'Cause the estates of bankrupts to be col- " 'lected, reduced to money and distributed, and " 'determine controversies in relation thereto, " 'except as herein otherwise provided.'

" And subdivision 15:

" 'Make such orders, issue such process, and " 'enter such judgments in addition to those " 'specifically provided for as may be necessary " 'for the enforcement of the provisions of this " 'act.'

The Court then points out the difference in the provisions of the Act of 1898 and of 1867, and proceeds:

" The issues in this case are therefore reduced " to the simple proposition whether a bankruptcy " court of a district other than that in which the " proceedings are pending has jurisdiction to " grant an injunction to protect the assets of the " bankrupt, and aid the bankruptcy court in " which the proceedings are pending to obtain " possession of them. * * *

" In my opinion, the bankruptcy act confers no " such jurisdiction. It makes no provision for " ancillary or auxiliary proceedings in district " courts other than that in which the proceedings

"are pending. The remedy of petitioners, if "they have any, is by a proceeding in the state "courts, or if, as it appears is the case in this "proceeding, the bankrupt could have maintained "the action in the national courts if no proceed- "ings in bankruptcy had been instituted against "him, by a plenary proceeding in the circuit "court for this district. * * * That course "is open to petitioners in this case. They may "proceed either in the courts of this state or the "circuit court for this district, setting up the "proceedings now pending in bankruptcy in the "Colorado court, and ask the court to protect the "rights of the creditors in the property situated "in this district, either by an injunction or the "appointment of a receiver; but this court, sit- "ting as a court of bankruptcy, has no such "jurisdiction, and the petition must be denied."

In the case *In re Williams*, 123 Fed. Rep., 321, District Judge HAMMOND, of the Western District of Tennessee, decided that where an adjudication took place in the District of Colorado and the proceedings were there pending, the District Court for the Western District of Tennessee had no ancillary power under the Act of 1898 to make an order on the application of the trustee of the bankrupt requiring persons residing within the district to appear before a referee for examination under Section 21 of the Act.

The Court said:

"The elastic or expansive quality of the word "'ancillary' is misleading possibly in relation to "this subject, and care must be had not to mis- "apply the practice of proceedings known in the "general law as ancillary to the practice under the "bankruptcy statute. * * *

"It is not necessary to go into the technicalities "of any of these examples of ancillary or aux- "iliary jurisdiction, because the existing bank- "ruptcy statute is absolutely destitute of any

" hint of such a jurisdiction in aid of proceedings
" in bankruptcy pending in another district or
" court of bankruptcy. Possibly, Congress might
" have adopted such a scheme of bankruptcy, and
" might have made every District Court in the
" United States a kind of administrator *ad col-*
" *ligendum* of the assets within that district in aid
" of the original court of bankruptcy charged
" with the administration of the bankrupt's
" property ; but Congress has done no such thing,
" and therefore the District Courts in the several
" states have no such ancillary or auxiliary jur-
" isdiction as has been invoked by these applica-
" tions. The scheme of the bankruptcy statute is
" that the trustee is equipped with the fullest pos-
" sible title to all property of the bankrupt, to
" all his rights, remedies, and causes of action,
" and certain specific causes of action have been
" created for him or given by the statute, as
" where he may bring suits that the creditors only
" could have brought without the statute. Be-
" sides, he is armed with all the legal rights and
" remedies that the bankrupt had or that any
" other owner might have to enforce his title
" and his rights of action, and these he is re-
" quired to use for the collection of the prop-
" erty and assets of the bankrupt under the
" guidance of the court which appoints
" him. He may bring his action of replevin
" for his race horses or other property ; or his
" action at law for the recovery of money ; or
" his bills in equity for the enforcement
" of trusts or other equitable remedies ; or his
" libels in admiralty, where that jurisdiction ap-
" plies ; and he must resort to the courts of the
" states, or to the federal courts in other states,
" according to his right to enter each or either of
" them, for enforcing whatever remedies he may
" have as owner of the bankrupt's estate, and to
" bring whatever causes of action may be neces-

" sary; and this is all he can do in the collection
" of the bankrupt's property for the payment of
" his debts. Simply because he is trustee in bank-
" ruptcy, or simply because he is engaged in the
" administration of a bankrupt's estate in one dis-
" trict, he is not authorized to go to another dis-
" trict, or to a bankruptcy court in another dis-
" trict, and ask for ancillary or auxiliary aid of
" any kind which is not comprehended within the
" same legal and equitable remedies belonging to
" other owners, as above set forth."

In *Ross-Meehan Foundry Co. et al. v. Southern Car & Foundry Co.*, 124 Fed. Rep., 403, decided by District Judge HAMMOND in the same District of Tennessee, it was held that the Court had no power under the Act of 1898 to appoint a Receiver for the property of an alleged bankrupt upon a summary application by parties to a petition in bankruptcy filed in another district without notice to the persons in possession and those otherwise interested as would answer the requirements of due process of law of the Constitution of the United States.

The Court said (at page 406):

" The very purpose of the Constitution in giving
" Congress the power to establish a uniform sys-
" tem of bankruptcy, and the object of every
" bankruptcy statute, is to obviate the disastrous
" effect of the administration of insolvent estates
" in broken pieces, according to the insolvency
" laws of many different states. Ancillary admin-
" istrations of insolvent assets, as found in equity
" courts, are neither desirable nor useful as analo-
" gies of practice in bankruptcy administrations.
" They have no application as precedents for
" bankruptcy proceedings *qua* bankruptcy pro-
" ceedings, and only are applicable when a trustee
" in bankruptcy, just as any other litigant, suing
" another, finds it needful to apply to the ordi-

" nary auxiliary or ancillary jurisdiction of the
" courts to assert his title or other rights devolved
" on him as an owner in trust. Other than this,
" ancillary proceedings in bankruptcy, if they
" may be so called, are unauthorized monstrosi-
" ties in practice, in my judgment. The necessity
" for separate administrations and ancillary pro-
" ceedings should not exist under any well-regu-
" lated system of bankruptcy. The design of the
" statute is to avoid all ancillary proceedings, and
" secure one uniform possession of the estate by a
" single court of bankruptcy having the juris-
" diction to administer the assets everywhere
" under that statute. For the purpose of
" securing that object under the act of 1898,
" the trustee is invested with the title to the prop-
" erty everywhere, and according to the scheme
" of the act is required to go anywhere and every-
" where, and assert his rights to the property in
" any court of competent jurisdiction, just and
" only as any other owner would do. He must
" depend for jurisdiction upon the conditions that
" would surround any other owner, and must pro-
" ceed in any court according to its proper meth-
" ods of procedure, and only as any other owner
" would proceed; and it is a mistake, in my judg-
" ment, to suppose that he has in bankruptcy
" courts or in the other federal courts any right to
" a jurisdiction, authority, or power, by reason of
" the proceedings in bankruptancy, other than any
" owner would have except that he might resort to
" a federal court of competent jurisdiction to en-
" force the rights he has derived by his title to
" the property as a bankruptcy trustee, just as any
" plaintiff presenting a case arising under the Con-
" stitution and laws of the United States might
" do, if it shall be held under the very guarded
" rulings of the Supreme Court of the United
" States on that jurisdiction that his claim of title
" or right to the property does present a case

"arising under the Constitution and laws of the "United States, thus giving a federal court juris- "diction where there is no diversity of citizenship "between him and the defendant in the case he "makes."

In *re Tybo Mining & Reduction Co.*, 132 Fed. Rep., 697, decided in the District of Nevada in 1904, there was a petition for the appointment of one Butler as Trustee, a petition for a similar remedy having been filed in another district, and the Court refused to take ancillary jurisdiction.

In *re Benedict*, 140 Fed. Rep., 55, decided in Eastern District of Wisconsin in 1905, the question of the appointment of an ancillary receiver under the Act of 1898 was involved. Judge QUARLES referred to the inconvenience which would be involved in administering the Bankruptcy Act if it were held that it did not confer ancillary jurisdiction, such inconvenience arising from the location of assets in widely scattered districts, the delay occasioned by the several steps required to secure an adjudication in bankruptcy and by the selection of a trustee, and the absence of any machinery for preventing the dissipation or loss of property in different districts.

The Court then calls attention to the fact that a receiver in one district has no jurisdiction in another district, and proceeds:

"The next question is whether this court may "by ancillary proceedings appoint a receiver to "aid the Illinois court in gathering up and pro- "tecting the assets of the alleged bankrupt within "this district pending the proceedings looking to "the selection of a trustee. This a question that "has been the source of much perplexity to the "bar, and has elicited adverse judicial opinions, "although I believe in practice ancillary jurisdic- "tion has been generally exercised."

He then refers to the several decisions upon the subject, and proceeds:

> " It will be conceded that ancillary jurisdiction
> " is not expressly provided for by the text of the
> " act of 1898,"

and then considers the decisions under the Acts of 1841 and 1867. He concludes his opinion as follows:

> " If it was necessary to effectuate the purposes
> " of the act to impose this status without regard
> " to territorial limits, is it not equally in line with
> " such legislative purpose to maintain such federal
> " control to the end that all the assets, wherever
> " situate, may remain intact until the trustee is
> " invested with title thereto? This can only be
> " done by co-operation among the several District
> " Courts. This proceeding in no proper sense in-
> " augurates a litigation, but culminates in a sup-
> " plementary order. It finds support in the juris-
> " diction already vested in another court of bank-
> " ruptcy to which it is ancillary. The receiver so
> " appointed must account to, and be largely con-
> " trolled by, the original court that is charged
> " with the administration of the estate."

These are all of the decisions under the Act of 1898 and it will be seen that the weight of authority is against the contention of the appellant herein.

Reliance is placed, however, by the appellant upon the decisions under the Acts of 1841 and 1867, and we will examine those decisions in order to point out that they are rendered inapplicable because changes have been made in the Act of 1898 which clearly indicate an intention on the part of Congress to limit the jurisdiction of courts of bankruptcy, both when acting in matters, narrowly speaking, of bankruptcy administration and also when acting as courts of adjudication.

In *ex parte Martin et al.*, 16 Fed. Cases, 874 (decided in 1842), Mr. Justice STORY, sitting as a Circuit

Judge, held that the equity jurisdiction of the District Courts under the Bankrupt Act was not confined to cases originally arising and pending in the particular court where the relief was sought, and that where a creditor living in Massachusetts commenced suits in several States other than Pennsylvania where proceedings were pending against the bankrupt for an adjudication, an injunction would issue against the Massachusetts creditor enjoining him from proceeding in the suits.

Judge STORY referred to the question as "not unattended with doubt and difficulty" as to whether District Courts have any jurisdiction in equity, except in cases originally arising and pending in the particular court. He then proceeds as follows:

> "The language of the sixth section of the act "is: 'That the district court in every district "shall have jurisdiction in all matters and proceed- "ings in bankruptcy arising under the act,' "the said jurisidiction to be exercised summarily, "in the nature of summary proceedings in equity. "The act then goes on to enumerate certain "specific cases and controversies, to what the "jurisdiction extends (which I deem merely affirm- "ative, and not restrictive of the preceding clause); "and then it extends the jurisdiction 'to all acts, "matters and things to be done under, and in vir- "tue of the bankruptcy, until the final distribu- "tion and settlement of the estate of the bank- "rupt, and the close of the proceedings in bank- "ruptcy.' Now, this language is exceedingly "broad and general; and it is not in terms, or by "fair implication, necessarily confined to cases of "bankruptcy originally instituted, and pending in "the particular district court, where the relief "is sought. On the contrary, it is not unnatural "to presume, that as cases, originally instituted "and pending in one district, may apply to reach "persons and property situate in other districts,

" and require auxiliary proceedings therein to per-
" fect and accomplish the objects of the act, the
" intention of congress was, that the district
" courts in every district should be mutually aux-
" iliary to each other for such purposes and pro-
" ceedings. The language of the act is sufficiently
" comprehensive to cover such cases ; and I can
" perceive no solid ground of objection to such an
" interpretation of it."

This is the only precedent of any value construing the Act of 1841. There are a number of cases, however, in which the Act of 1867 was considered.

In re Richardson, 20 Fed. Cases, 696 (decided in 1868) bankruptcy proceedings had been commenced and were pending in Louisiana and thereafter a suit was commenced against the bankrupts in a court in the State of New York to collect a debt which was provable in bankruptcy, and the bankrupts themselves applied to the District Court for the Southern District of New York on petition for an injunction staying proceedings in that suit until the close of the bankruptcy proceedings in Louisiana.

It was held by Justice BLATCHFORD, who was then District Judge, that independently of the Bankruptcy Act of 1867 there was no jurisdiction in the District Court to grant the relief asked for, nor was the power to give such a remedy conferred by that act upon any Court except that one in which bankruptcy proceedings were pending.

Judge BLATCHFORD said :

" The first section of the act is limited to the
" powers of the court in which the bankruptcy
" proceedings are pending—the court in which the
" proceedings in bankruptcy are commenced in
" the manner specified in the thirty-eighth section
" of the act.

" The second section is also limited to the
" powers of the district court of the district where

"proceedings in bankruptcy are pending, and to "the powers of that court in regard to suits by and "against the assignee in bankruptcy.

"The twenty-first section, which is the one "giving to district courts the power of granting "injunctions to stay suits and proceedings to "recover debts from bankrupts, cannot be con- "strued as conferring such power upon any other "district court than the 'court in bankruptcy,' "which means the court where the bankrupt pro- "ceedings are pending.

"No other section of the act confers upon "this court the power invoked."

In *Markson v. Heaney*, 16 Fed. Cases, 769 (decided in 1871), a debtor residing in Kansas was adjudged a bankrupt on the petition of his creditors. A mortgage creditor started a suit in a State Court of Indiana to foreclose a mortgage. The mortgagee was a resident and citizen of Minnesota, and the assignees in bankruptcy filed a bill in the Circuit Court of the United States for the District of Minnesota against the mortgagee, charging fraud in the execution of the mortgage and asking that it be declared void and that an injunction issue to restrain the further prosecution of the foreclosure suit. Judge DILLON held that the District Court in which bankruptcy proceedings were pending or the Circuit Court for the same district could, under the Act of 1867, in cases where the suit in the State Court was commenced after the proceedings in bankruptcy, enjoin the plaintiff from further prosecuting the suit. But he further held that the Circuit Court for the Minnesota District had no bankruptcy jurisdiction and could exercise only its ordinary equity powers.

In *Shearman v. Bingham*, 21 Fed. Cases, 1213 (decided by Judge LOWELL in 1871), it was held that a District Court in a district other than that in which bankruptcy proceedings are pending has no jurisdiction under the Act of 1867 of suits by assignees against

debtors of the bankrupt by virtue of any provision of the bankrupt law. But on appeal to the Circuit Court (21 Fed. Cases, 1270), this decision was reversed, Circuit Judge CLIFFORD writing the opinion. He held that the jurisdiction in question did exist and that the Act of 1867 contained language not contained in the Act of 1841 which clearly indicated the intention of Congress to create such jurisdiction, and he especially relied upon the provision to the effect "that the jurisdiction shall extend to the collection of the assets of the bankrupt" which were not contained in the corresponding provision in the Law of 1841.

He adds:

> "Contrary decisions have been made by several "of the district judges, and in one case by a "circuit judge, but it must suffice to remark in "respect to those decisions, that the reasons as- "signed in support of the conclusions, do not "appear to be satisfactory. They assume what is "not correct, that the jurisdiction of the district "courts is confined to the district in which the "proceedings shall be pending. Such an ex- "pression is contained in the first clause of sec- "tion 2 of the act, which describes the revisory "power of the circuit courts, but it is not contained "at all in section 1 of the act, and courts of "justice have no right to enact any such amend- "ment. Suits to collect the assets of the bank- "rupt, except to a very limited extent, cannot "be maintained in the circuit courts, so that if the "theory of the defendant is correct, there is no "right under the bankrupt act to maintain suits "for such a purpose in any federal court in a case "where the debtor resides out of the district in "which the proceedings in bankruptcy are pend- "ing, which cannot be admitted, as the whole "tenor of the bankrupt act shows that congress "intended to provide for the complete adminis- "tration of the bankrupt system in the federal

" courts, and through the instrumentality of fed-
" eral officers. Confirmation of that view is also
" derived from the fact that congress borrowed
" the language employed to describe the ju-
" risdiction of the district courts from the cor-
" responding section in the prior law, which had
" uniformly been so construed by the federal
" courts, and also from the fact that it is settled
" law that congress cannot compel the state courts
" to entertain such jurisdiction in favor of an as-
" signee for the collection of the assets of the
" bankrupt."

In *Goodall v. Tuttle*, 10 Fed. Cases, 579 (decided in 1872), District Judge HOPKINS, of the Western District of Wisconsin, in 1872 considered the question as to whether a suit could be maintained by an assignee in bankruptcy to collect the assets of a bankrupt in any other District Court than that in which the proceedings in bankruptcy were pending, the act not expressly conferring power to maintain such a suit. He held that the power should be implied from the provision of the statute which conferred upon the Court power " to collect the assets ".

In *Lathrop v. Drake*, 91 U. S., 516, the Supreme Court specifically upheld the doctrine of *Shearman v. Bingham, supra.* Justice BRADLEY, speaking of the jurisdiction of the District Court, said:

" Of this there are two distinct classes: first,
" jurisdiction as a court of bankruptcy over the
" proceedings in bankruptcy initiated by the peti-
" tion, and ending in the distribution of assets
" amongst the creditors, and the discharge or
" refusal of a discharge of the bankrupt; secondly,
" jurisdiction, as an ordinary court, of suits at
" law or in equity brought by or against the as-
" signee in reference to alleged property of the
" bankrupt, or to claims alleged to be due from or
" to him. The language conferring this jurisdic-

" tion of the district courts is very broad and gen-
" eral. It is, that they shall have original juris-
" diction in their respective districts in all mat-
" ters and proceedings in bankruptcy. The various
" branches of this jurisdiction are afterwards speci-
" fied; resulting, however, in the two general
" classes before mentioned. Were it not for the
" words, 'in their respective districts,' the juris-
" diction would extend to matters of bankruptcy
" arising anywhere, without regard to locality. It
" is contended that these words confine it to cases
" arising in the district. But such is not the
" language. Their jurisdiction is confined to their
" respective districts, it is true; but it extends to
" all matters and proceedings in bankruptcy with-
" out limit. When the act says that they shall
" have jurisdiction in their respective districts, it
" means that the jurisdiction is to be exercised in
" their respective districts. Each court within its
" own district may exercise the powers conferred;
" but those powers extend to all matters of bank-
" ruptcy, without limitation."

Again, at page 518, Judge BRADLEY said:

" Proceedings ancillary to and in aid of the pro-
" ceedings in bankruptcy may be necessary in
" other districts where the principal court cannot
" exercise jurisdiction; and it may be necessary
" for the assignee to institute suits in other dis-
" tricts for the recovery of assets of the bankrupt.
" That the courts of such other districts may ex-
" ercise jurisdiction in such cases would seem to
" be the necessary result of the general jurisdic-
" tion conferred upon them, and is in harmony
" with the scope and design of the act. The State
" courts may undoubtedly be resorted to in cases
" of ordinary suits for the possession of property
" or the collection of debts; and it is not to be
" presumed that embarrassments would be en-

> " countered in those courts in the way of a prompt
> " and fair administration of justice. But a uniform
> " system of bankruptcy, national in its character,
> " ought to be capable of execution in the national
> " tribunals, without dependence upon those of the
> " States in which it is possible that embarrass-
> " ments might arise."

The Court also held that the Circuit Courts within each district had under Section 2 of the Act of 1867 concurrent jurisdiction in the same district with District Courts in reference to certain matters referred to in that section.

Finally, he referred to the amendments of 1874, saying that they had little bearing upon the question under consideration, although they

> " removed any ambiguity that may have existed,
> " but did not thereby impress a more restricted
> " meaning upon the language of the original act
> " than was due to it by a fair judicial construc-
> " tion."

The last decision under the Act of 1867 which is in point is *In re Tifft*, 23 Fed. Cases, 1213 (decided by Judge CHOATE in 1879) in which the principle of *Lathrop v. Drake* is applied, and it is held that ancillary jurisdiction would enable a Court within its own district to grant injunctions, stay proceedings, enforce the provisions of composition resolutions, or administer other summary relief as a court in bankruptcy. Referring to the case of *Shearman v. Bingham*, Judge CHOATE said :

> " This case and its approval by the Supreme
> " Court of the United States must be taken,
> " therefore, to have set at rest the doubts that
> " before existed on these points."

Upon the authority of these cases it may be conceded that under the Bankruptcy Acts of 1841 and

1867, ancillary jurisdiction, both in summary proceedings and in plenary suits, existed in all District Courts within their respective districts; and the question, therefore, remains whether the provisions of the Act of 1898 show an intention on the part of Congress to restrict such jurisdiction so that the inferences of the courts based upon the general language of the earlier acts cannot be indulged under the Act of 1898.

It was probably due to the uncertainty which had existed under the Act of 1841 as to the extent of the ancillary jurisdiction of District Courts that Congress was led to insert in Section 1 of the Law of 1867 the words "that the jurisdiction shall extend to the collection of the assets of the bankrupt," which, as Justice CLIFFORD remarks in *Shearman vs. Bingham*, were not contained in the corresponding provisions of the Law of 1841 and which influenced him in reaching the conclusion that Congress intended to vest in District Courts outside the district where bankruptcy proceedings were pending jurisdiction to collect debts due to the bankrupt estate. The addition of these words, however, did not make the act so clear as to remove all doubt, for such an eminent bankruptcy judge as District Judge LOWELL expressed the opinion that the effect of Sections 1 and 2 of the Act of 1867 was to limit the jurisdiction of the Circuit and District Courts to the district in which the petition in bankruptcy was filed, not regarding himself as bound by the decision of Justice STORY under the Act of 1841 in the *Martin* case. While this decision of Judge LOWELL was reversed in the Circuit Court, it is significant that only two years after the reversal Congress passed the amendatory act of 1874. The original act had provided as follows:

> "Said Circuit Court shall also have concurrent
> "jurisdiction with the district courts of the same
> "district of all suits at law or in equity which
> "may or shall be brought by the assignee in
> "bankruptcy against any person claiming an ad-

"verse interest, or by such person against such "assignee, touching any property or rights of "property of said bankrupt transferable to or "vested in such assignee."

The amendment of 1874 provided that—

"The several Circuit Courts shall have, within "*each* district, concurrent jurisdiction with the "district court of *any* district * * * , of all "suits at law or in equity * * * ."

In *Lathrop v. Drake*, Justice BRADLEY said of the amendatory act that it "removed any ambiguity "that may have existed." The original act and the amending act clearly permitted the inference by the courts that Congress intended without restriction to confer general bankruptcy powers which would result in a uniform system throughout the country. And if the language of the Act of 1898 had remained in the general form used in the earlier acts, the decisions under those acts would have decisive weight. But for some reason not appearing upon the face of the statute, the Act of 1898 contains restrictive provisions as to the jurisdiction of both the circuit and the district courts which weaken if they do not entirely destroy the force of the reasoning of the earlier decisions based upon the general language of the former statutes. Several instances of these restrictive provisions may be referred to.

While Section 2 of the Act of 1898 contains the general provision conferring upon District Courts original jurisdiction within their respective territorial limits, yet among the nineteen subdivisions of the section which specified various proceedings in bankruptcy to which the jurisdiction was to apply, Subdivision 7 confers power to "cause the estates of bankrupts to "be collected, reduced to money and distributed, and "determine controversies in relation thereto, *except as "herein otherwise provided.*" Section 23 contains

provisions which may be regarded as coming within this exception, and clearly restricts the jurisdiction of Circuit and District Courts within much narrower limits than existed under the Act of 1841, according to Judge STORY's decision in *ex parte Martin*, or under the Act of 1867, according to the decision of Judge CLIFFORD in *Shearman v. Bingham*, or of the Supreme Court in *Lathrop v. Drake*. Section 23 provides as follows:

> "*(a)* The United States circuit courts shall "have jurisdiction of all controversies at law and "in equity, as distinguished from proceedings in "bankruptcy, between trustees as such and ad- "verse claimants concerning the property ac- "quired or claimed by the trustees, *in the same* "*manner and to the same extent* ONLY *as though* "*bankruptcy proceedings had not been instituted and* "*such controversies had been between the bankrupts* "*and such adverse claimants.*
>
> "*(b) Suits by the trustee shall* ONLY *be brought* "*or prosecuted in the courts where the bankrupt,* "*whose estate is being administered by such trustee,* "*might have brought or prosecuted them if pro-* "*ceedings in bankruptcy had not been instituted,* "*unless by consent of the proposed defendant, ex-* "*cept suits for the recovery of property under* "*section 60, subdivision b, and section sixty-seven,* "*subdivision e.*

While by this language jurisdiction is conferred upon courts outside the district where the bankruptcy is pending, there is a plain intention to restrict this jurisdiction to the specific cases mentioned and to limit any inference of a broader jurisdiction which might otherwise have been drawn from the general language of Subdivision 7 of Section 2. There was no such limitation in Section 6 of the Act of 1841. It was the general language of that section which led Judge STORY to make the inferences in *ex*

parte Martin as to the intent of Congress. Judge CLIFFORD's opinion in *Shearman v. Bingham* was founded on the general provision of Section 1 conferring upon District Courts power to collect "all the assets of the bankrupt," which is the provision contained in Subdivision 7 of Section 2 of the Act of 1898 in substantially the same form. And Justice BRADLEY's decision in *Lathrop v. Drake* was based upon the general language of Sections 1 and 2 of the Act of 1867.

Under the Acts of 1841 and 1867, there was no limitation upon the jurisdiction of the Circuit Courts based upon the diversity of citizenship or upon any other fact upon which, under the Federal Judiciary Act, such jurisdiction was made to depend. By Section 23 of the Act of 1898, however, defendant's trustees in bankruptcy may not, without the consent of the proposed defendants, bring suits concerning the property of the estate, which are not, strictly speaking, proceedings in bankruptcy, unless the bankrupt might have brought them if bankruptcy proceedings had not been instituted. This restriction is of wide application. A like restriction is imposed upon the jurisdiction of District Court. It would, of course, have swept away all the jurisdiction of suits of all kinds brought by the Trustee in District Courts, if Congress had not saved to the District Courts certain powers peculiarly needed for the administration of a bankruptcy system and had not inserted the exception that subdivision *b* of Section 23 was not to apply to "suits for the recovery of property under Sec-
" tion 60, subdivision *b*, and Section 67, subdivision *e*."

Section 60, subdivision *b*, refers to preferences given within four months before the filing of the petition in bankruptcy and provides that they may be recovered by the trustee. And the section further provides:

> "And, for the purpose of such recovery, any
> " court of bankruptcy, as hereinbefore defined, and
> " any State court which would have had jurisdic-

" tion if bankruptcy had not intervened, shall have
" concurrent jurisdiction."

Section 67, subdivision *e*, provides that conveyances in fraud of creditors shall be null and void and that it shall be the duty of the trustee to sue to recover the property conveyed, and that "for the purpose of such " recovery any court of bankrupty, as hereinbefore " defined, and any State court which would have juris- " diction if bankruptcy had not intervened, shall have " concurrent jurisdiction."

It is obvious that Congress believed that if the exception contained in Section 23 had not been inserted the general language of the statute could not have been construed so as to give to the district courts the jurisdiction expressly conferred by the sections which have just been quoted. The entire reasoning of the decisions under the earlier acts, both as to summary proceedings and plenary actions was based upon the fact that the general language of the acts by which jurisdiction in bankruptcy was conferred indicated no intention to impose any restrictive limits and, therefore, that the courts were at liberty to attribute to Congress an intention by the use of general language to accomplish that which the judges believed to be the only way in which a uniform system of bankruptcy could be effectually administered. Such reasoning cannot be applied to the act of 1898 and we respectfully submit that no jurisdiction exists except that which is specifically conferred by the act.

If it had been desired to continue in the District and Circuit Courts the broad general jurisdiction which had been under the previous acts conferred upon them, it is fair to assume that Congress, having its attention called to the general language of the previous acts, to the doubt which had been expressed as to its meaning and to the judicial interpretation which had finally been placed upon it, would have inserted in the act of 1898 specific provisions creating the jurisdiction now contended for. It is significant in this connection that

at the last session of Congress there was introduced an amendment to the Act of 1898 conferring upon District Courts in bankruptcy the kind of ancillary judisdiction which it is claimed by the appellant to exist under the act. The bill, however, failed to pass. It is referred to in *Vol., 43, No. 46, page 2050* of the Congressional Record.

It does not avail to urge that the general jurisdiction for which the appellant contends is preserved, in spite of Sections 23, 60 and 67 by the sentence at the close of Section 2 which is as follows:

> "Nothing in this section contained shall be "construed to deprive a court of bankruptcy of "any power it would possess were certain specific "powers not herein enumerated."

That language might be availed of in relation to those powers which were affirmatively given by Section 2; but it would not avail to affect the argument made above. A court of bankruptcy has no powers except those conferred by the Statute and we have shown that the powers contended for have not been conferred.

Subdivisions (7) and (15) of Section 2 of the Bankruptcy Act are also referred to as conferring the ancillary jurisdiction contended for. Subd. (7) provides that courts of bankruptcy within their respective territorial limits may exercise original jurisdiction to "cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto, except as herein otherwise provided," and Subd. (15) provides that such courts shall have power "to make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act." So far as plenary actions are concerned there can be no inference based upon the general language of these subdivisions that courts of bankruptcy have any ancillary jurisdiction

except that expressly conferred by Sections 23, 67 and 70 above referred to. And it seems clear that a like limitation must be placed upon the language of these subdivisions in respect of jurisdiction in summary proceedings in bankruptcy.

Lathrop v. Drake and *Shearman v. Bingham* were both plenary actions and both cases would necessarily have been decided the other way under the Act of 1898, unless jurisdiction could have been found to exist under the specific language of Section 67*b*. It is difficult to see how upon the reasoning in these cases it can be argued that in spite of the restrictions placed upon the jurisdiction of the Courts in plenary suits there can still be inferred from the general language of Section 2, that summary ancillary jurisdiction was to be preserved. If such an inference be made we might have the anomaly of a District Court in a summary ancillary proceeding ordering the surrender possession of property of the bankrupt although on account of the limitations of Section 23 it had no jurisdiction to entertain a suit for damages for withholding such possession. Other instances might be given, but it is not necessary. Congress has indicated clearly a policy of restricting the jurisdiction of the Federal Courts, and precisely defining what that jurisdiction should be. It may well be that Congress thought that outside of the district where bankruptcy proceedings were commenced the drastic summary proceedings of the bankrupt act were subject to abuse. But whatever the reason, we are not so much concerned with it as with the construction of the statute itself which we submit should not have given to it the broad meaning contended for.

POINT II.

The trustee in bankruptcy has not the title to the books in question.

Even if this application had been made to the District Court which originally adjudicated the Randolph-Macon Coal Company a bankrupt, it would not have had power, in a summary proceeding, to direct the delivery of the books in question to the trustee. The title of trustee to these books is disputed by Messrs. Gardiner and Dutcher. Under the cases, therefore, his remedy to establish his title or right to possession lies in a plenary action.

In *Jaquith vs. Rowley*, 188 U. S., 620, a trustee in bankruptcy applied to the Court for an order directing a surety to turn over to him funds that had been deposited in his hands by the bankrupt as security for the surety's liability on the bankrupt's bail bond. The Court held that it did not have jurisdiction to entertain such proceeding by summary application.

The petition filed by the trustee alleges that certain books and papers relating to the business of the bankrupt, to wit : the stock certificate book. the corporation minute book and the stock ledger are in the custody of Gardiner or Dutcher (petition, Rec., fol. 5). The nature of the books in Dutcher's possession appears from his affidavit and the exhibits attached. From these it appears that these books do not relate to the property of the corporation. The Bankrutcy Act, Section 70–A, provides :

> " The trustee of the estate of a bankrupt upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt, except in so far as it is to

property which is exempt to all (1) documents relating to his property;"

Documents are defined in Subdivision 13 of Section 1 of the Act as follows: "Document shall include any book, deed or instrument in writing;" it is therefore only to those books or documents which relate to the property of the bankrupt that the trustee has title. The stock certificate books of the shares of stock of the Randolph-Macon Coal Company do not relate to the property of the corporation in any sense of the word. They describe not the property of the corporation but the property of its shareholders, *i. e.*, their rights in the corporation. An examination of exhibits A, B and C (Rec., pp. 7, 8) shows that the only information to be derived from the stock certificate books would be the number of shares of the capital stock of the Company outstanding, the names of the shareholders and the dates of the issuance and transfers of the certificates. No other information is contained in the stock ledger and stock transfer book of the corporation, copies of which are annexed to Dutcher's affidavit and marked Exhibits D and E (Rec., pp. 8, 9). These books cannot, therefore, be said to relate to the property of the corporation. The remaining documents in Dutcher's possession are the minutes of the meetings of directors and stockholders of the Randolph-Macon Coal Company and the unused first mortgage bonds. There is no provision in the laws of Missouri whereby the corporation is obliged to keep minutes of the meetings of directors or stockholders. Such minutes, if kept, are kept solely for the convenience of the directors and stockholders and are their property and not the property of the corporation. The unused first mortgage bonds do not relate to property of the corporation either. What is evidently meant by this section of the Bankruptcy Act is not such books as are claimed here, but title deeds, policies of insurance, account ledgers, in other words, muniments of title and books which deal with the accounts of the

corporation. All the account books of this corporation have been turned over to the trustee in bankruptcy and there are none remaining in the hands of the president or secretary or involved in this controversy.

POINT III.

The order of the District Court should be affirmed.

HENRY W. TAFT,
Of Counsel for Appellees James T. Gardiner and Howard Dutcher,
40 Wall Street,
City of New York.

BABBITT, TRUSTEE IN BANKRUPTCY, *v.* DUTCHER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 39. Argued November 29, 1909.—Decided February 21, 1910.

Corporate records and stock-books of a corporation adjudicated a bankrupt pass to the trustee and, where there is no adverse holding, the bankruptcy court can compel their delivery by summary proceeding.

In a case in which the original court of bankruptcy can act summarily, another court of bankruptcy, sitting in another district, can do so in aid of the court of original jurisdiction.

THE Randolph-Macon Coal Company was a Missouri corporation, and was duly adjudicated a bankrupt March 26, 1907, in proceedings instituted in the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri. Byron F. Babbitt was duly appointed trustee in bankruptcy for the corporation May 10, 1907, and duly qualified by giving bond on that day.

He thereafter made demand upon the president of the company for the delivery to him of the corporate records and stock books of the bankrupt company, which were kept in the office maintained by the company in New York city. This request was refused by letter of the president of the company, dated September 24, 1907, in which he says that he is advised "that such records and stock books are not documents relating to the property of the bankrupt, and therefore you, as trustee in bankruptcy, are not entitled to their possession."

Thereupon the trustee made application to the District Court in and for the Southern District of New York, by peti-

tion, for an order directing James T. Gardiner, the president, and Howard Dutcher, the secretary, of the company, or either of them, to deliver to him the stock-certificate book, the corporation minute book and the stock register of said company, together with all other records and documents belonging to said company in their possession or under their control. Gardiner and Dutcher were within the jurisdiction of the District Court for the Southern District of New York, and the books and papers referred to were within their custody there, and the trustee alleged that the stock-certificate book, the corporation minute book, and the stock register book were necessary to the trustee in his administration and settlement of the affairs of the company.

Thereafter a hearing was had on the petition, the order to show cause and return thereto, and the District Judge (Holt, J.) endorsed on the petition: "I am obliged to deny this motion on the authority of *In re Von Hartz et al.*, 142 Fed. Rep. 726," and ordered that the motion be denied on the ground that the court was without jurisdiction to entertain the proceeding, or to grant the relief prayed for, and the District Judge also certified that the order denying the motion and refusing to grant the relief was based solely on the ground that the court was without jurisdiction "to entertain proceedings instituted by a trustee in bankruptcy duly appointed in a bankruptcy proceeding pending in another district, to compel the officers of the bankrupt to deliver to such trustee the documents in their possession relating to the business of the bankrupt."

This appeal was then allowed and duly prosecuted.

Mr. William B. Hornblower, with whom *Mr. Morgan M. Mann* was on the brief, for appellant:

The title to all books and papers relating to the business of the bankrupt was vested in the trustee. Subd. 1, § 70, and subd. 13, of § 1 of the bankrupt act. See *Matter of Hess*, 134 Fed. Rep. 109; *Mueller* v. *Nugent*, 184 U. S. 1. And, as